IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL WRIT No. 1662 of 1994

KAMAL KUMAR JAIN
V/S
STATE & ANR

2. CIVIL WRIT No. 5325 of 1993

M/S ARAVALI GRANITES LTD.
V/S
STATE & ANR

Mr. DD THANVI & Mr. GR BHARI for Mr.SANJAY MATHUR, for the appellant / petitioner

Mrs. RR KANWAR, A.G.A. for the respondent

Date of Order : 24.1.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

These petitions have been filed challenging the assessment order assessing the royalty.

The contention raised by the learned counsel for the petitioner is, that the lease was granted for minor mineral, and for part of the product the royalty is charged on the excavation, as major mineral.

Learned counsel for the respondent invited my attention to Annexure-7, annexed in the Writ Petition No.

5325/1993, whereunder the Central Government has fixed the rates of royalty exercising powers under Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957, and thereunder the royalty has been specified to be chargeable at Rs. 50/- per tonne, where the mineral contains silica to the extent less than 1.5%. Obviously the stone containing higher percentage of silica would be chargeable with royalty @ Rs. 25/-.

In that view of the matter, the question is as to what was the quality of goods excavated by the petitioner, and that being the question of fact was required to be decided by the assessing authority.

Mr. Thanvi pointed out that material was placed on record by the petitioner in this regard before the assessing authority, and there was no rebuttal, but that material has not been considered.

In the above circumstances, since the question as to what was the extent of silica contents in the excavated goods, is a question which is required to be gone into by the authorities under the relevant Act itself.

In these circumstances, since the petitioners had the remedy of appeal against the assessment order, notwithstanding the fact, that this writ has been

entertained, despite availability of alternative remedy, I find it to be a fit case, where the appropriate remedy is appeal only, and cannot be adjudicated in my 226 jurisdiction.

In view of the above, I am not inclined to interfere in these writ petitions. The same are, therefore, dismissed.

Since the writ petitions are filed in 1993 and 1994, and have been admitted, it is directed that if the petitioner files appeal before the competent authority within one month from today, the appellate authority shall entertain the appeal, and decide it on merits, instead of dismissing on the question of limitation, and it will also be open to the petitioner to make appropriate prayer for grant of interim stay. It is also directed that till such prayer is decided by the appellate authority, interim order granted by this Court shall continue. It is further made clear that if appeal is not filed within one month from today, the petitions will stand dismissed unconditionally.

(N P GUPTA),J.

/Sushil/